

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75 4248

United States Court of Appeals
for the Second Circuit

ESTATE OF AMY ANN MCGINNIS SPALDING,
Deceased, CHARLES F. SPALDING,
Executor,

Petitioner-Appellant,

v.

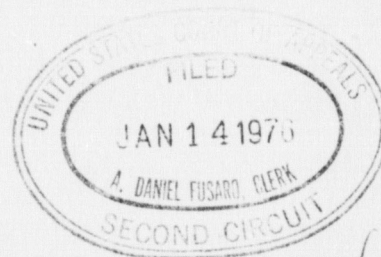
COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

JOINT APPENDIX ON APPEAL

Paul, Weiss, Rifkind, Wharton & Garrison
Attorneys for Petitioner-Appellant
345 Park Avenue
New York, New York 10022
212 644-8000

James B. Lewis
Jose E. Trias
Of Counsel



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 1843-73

ESTATE OF AMY ANN McGINNIS SPALDING, DECEASED,
CHARLES F. SPALDING EXECUTOR,

870 United Nations Plaza

New York, N. Y. 10017

PETITIONER.

VS.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT.

APPEARANCES FOR PETITIONER:

James B. Lewis (PAUL, WEISS, RIFKIND, WHARTON,
& GARRISON) 345 Park Ave. New York, N. Y. 10022
Jose Trias (8/11/75, same add.) (E/A)

ADDRESS

Date			Filings and Proceedings	Action	Served
Month	Day	Year			
Mar. 15, 1973			PETITION FILED: FEE PAID Mar. 15, 1973		
Mar. 15, 1973			REQUEST by Petrs. for trial at New York, N. Y.	GRANTED Mar. 16, 1973	Mar. 16, 1973
May 3, 1973			ANSWER by Resp. filed.		Mar. 16, 1973
June 28, 1974			MOTION by Petr. for summary judgment. (Exhibits 1 thru 6 attached) (C/S 6/27/74)		May 4, 1973
June 28, 1974			MEMORANDUM OF LAW by Petr. in Support of Motion for Summary Judgment. (C/S 6/27/74)		
June 28, 1974			AFFIDAVIT of Charles F. Spalding filed. (C/S 6/27/74)		
July 2, 1974			NOTICE of Hearing on Aug. 14, 1974 at Washington, D.C. on Petr.'s motion for Summary Judgment.		JUL 2 1974
July 15, 1974			MOTION by Petr. to recalendar hearing on Aug. 14, 1974 at Wash., D.C. to Aug. 21, 1974 at Wash., D.C. on Petr. motion for Summary Judgment. (No Obj. Resp.)	GRANTED July 16, 1974 to Sept. 4, 1974 Motions Session	JUL 17 1974
Aug. 21, 1974			SECOND MOTION by Petr. to change the date of hearing on Petr.'s motion for Summary Judgment to Oct. 2, 1974 (No Obj. Resp.)	GRANTED Aug. 22, 1974	AUG 22 1974
Sept. 23, 1974			MOTION by Petr. to withdraw Motion for Summary Judgment without prejudice to right to renew the same. (C/S 9/20/74)	GRANTED Sept. 23, 1974	Sept. 24, 1974
Nov. 15, 1974			MOTION by Petr. for leave to submit proceeding under Rule 122, with opening Briefs due: Jan. 13, 1975 and (continued to page 2)	GRANTED Nov. 27, 1974	NOV 27 1974

DOCKET NO. 1843-73

(Continuation)

ESTATE OF AMY ANN MCGINNIS SPALDING ET AL		PETITIONER	PAGE 2
Date	Filings and Proceedings	Action	Served
Month Day Year			
Motion Cont.			
Nov. 15, 1974	Reply Briefs due: Feb. 10, 1975. (No Obj. Resp.)		
Nov. 15, 1974	STIPULATION OF FACTS filed.		
Nov. 27, 1974	ORDER, that the proceeding be and the same is assigned		NOV 27 1974
	to Judge Theodore Tannenwald, Jr., for disposition.		
	Opening briefs will be due from both parties on		
	January 13, 1975 and reply briefs will be due on		
	February 10, 1975.		
Jan. 13, 1975	BRIEF for Respondent filed.		JAN 16 1975
Jan. 15, 1975	BRIEF for Petr. filed. (P.M. Timely).		JAN 16 1975
Jan. 31, 1975	PETITIONER'S REPLY BRIEF FILED.		FEB 11 1975
Feb. 10, 1975	REPLY BRIEF by Resp. filed.		Feb. 11, 1975
July 30, 1975	MEMORANDUM OPINION filed, Judge Tannenwald.		July 30, 1975
	(Decision will be entered under Rule 155)		
Aug. 11, 1975	ENTRY OF APPEARANCE by Jose Trias for petr.		AUG 12 1975
Oct. 2, 1975	AGREED COMPUTATION filed.		
Oct. 6, 1975	DECISION entered, Judge Tannenwald.		Oct. 6, 1975
	APPELLATE PROCEEDINGS		
Oct. 16, 1975	MOTION to fix amount of bond.		Oct. 21, 1975
Oct. 20, 1975	ORDER fixing amount of bond at \$634,305.57.		Oct. 21, 1975
Nov. 10, 1975	NOTICE OF APPEAL to U.S.C.A., Second Circuit, filed by Petr.		Nov. 11, 1975
Nov. 11, 1975	NOTICE of Filing with copy of notice of appeal sent to		
	Mr. Meade Whitaker, Chief Counsel.		Nov. 11, 1975
Nov. 11, 1975	NOTICE, to parties, of assembling and date for trans-		
	mission of record.		Nov. 11, 1975

UNITED STATES TAX COURT

-----X

Estate of AMY ANN MCGINNIS SPALDING,	:	
Deceased, CHARLES F. SPALDING, Executor,	:	Docket No.
	:	1843-73
Petitioner,	:	
	:	
v.	:	
	:	
COMMISSIONER OF INTERNAL REVENUE,	:	
	:	
Respondent.	:	

-----X

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto, by their respective counsel, that, for the purposes of this case, the facts herein stated shall be taken as true.

1. The petitioner, Charles F. Spalding, is the duly qualified and acting Executor of the Estate of Amy Ann McGinnis Spalding (the "decedent"), having been appointed as such by the Superior Court of the State of California for the County of San Mateo on January 9, 1970. At the time of the filing of the petition herein, the petitioner's legal residence was at 870 United Nations Plaza, New York, New York 10017.

2. The decedent died testate on December 18, 1969. At the date of the decedent's death, the decedent and the petitioner resided at 1832 Floribunda Avenue, Hillsborough, San Mateo County, California. The decedent was survived by

the petitioner and by four children of her marriage to Thomas A. Sullivan, which marriage had been terminated by the death of Mr. Sullivan on November 20, 1965.

3. The decedent's last will and testament, dated November 22, 1969, was admitted to probate on January 8, 1970 by the Superior Court of the State of California for the County of San Mateo. A copy of the said will is annexed hereto as Joint Exhibit 1-A.

4. The Executor filed a timely estate tax return (Form 706) for the decedent's estate with the District Director of Internal Revenue at San Francisco, California and paid the estate tax shown on the return to be due. A copy of the said estate tax return is annexed hereto as Joint Exhibit 2-B.

5. By notice of deficiency dated February 12, 1973 (a copy of which is attached to the petition herein), respondent determined a deficiency in estate tax of \$467,197.62, which would be reduced to \$421,373.29 if the maximum credit allowable by law for state death taxes (if substantiated) were allowed.

6. The petitioner and Elizabeth C. Spalding were married in 1945. They resided in Connecticut until 1962, when the petitioner changed his residence to Westchester County, New York. Elizabeth C. Spalding has continued to reside in Connecticut.

7. Annexed hereto as Joint Exhibit 3-C is a copy of a decree of divorce rendered by the Second Judicial District Court of the State of Nevada on March 19, 1964.

8. Annexed hereto as Joint Exhibits 4-D, 5-E and 6-F, respectively, are a copy of the findings of fact and conclusions of law rendered by the Supreme Court of the State of New York (County of Westchester, Special Term, Part V) in the case of Elizabeth C. Spalding v. Charles F. Spalding, Index No. 1447/67; a copy of the judgment rendered by that Court in that case; and a copy of the transcript of the hearing before that Court in that case.

9. Annexed hereto as Joint Exhibit 7-G is a copy of a certificate of marriage of the petitioner and the decedent at San Francisco, California on May 11, 1968.

10. The United States Treasury Bonds reported as items 3 and 4 of Schedule B of the estate tax return should be valued at their face amount to the extent that they have been or can be used to pay estate tax; any balance of such bonds should be valued at 64.69 percent of face value. The determination of the extent to which such bonds can be used to pay estate tax must await the Court's decision.

11. The deductions claimed under item 3 of Schedule J of the estate tax return as maintenance expenses of the real property reported as item 1 of Schedule A (an aggregate of \$22,745) should be allowed in the amount of \$2,500.

12. The petitioner accepts the adjustments made by

the notice of deficiency to Schedules A, B, F, J and K of the estate tax return except to the extent otherwise indicated in paragraphs 10 and 11 hereof.

13. No appeal was taken from either of the court decisions referred to in paragraphs 7 and 8.

James B. Lewis
Counsel for Petitioner

JOINT EXHIBIT
3-CNo. 210000Dept. No. 2

WOODBURN, FORMAN, WEDGE, BLAKEY, FOLSOM and HUG

Attorneys for Plaintiff

SECOND

In the SECOND Judicial District Court of the State of
Nebada; In and for the County of WASCO

CHARLES F. SPALDING,

Plaintiff.....

vs.

ELIZABETH C. SPALDING,

Defendant.....

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECREE OF DIVORCE

The above-entitled action came on regularly for trial on this date, before the above-entitled Court, sitting without a jury, a trial by jury having been waived, the plaintiff appearing personally and by his Attorneys, WOODBURN, FORMAN, WEDGE, BLAKEY, FOLSOM and HUG, and the defendant not appearing, and said cause coming on for trial on all of the pleadings herein, and it appearing to the satisfaction of the Court that the defendant, ELIZABETH C. SPALDING, was regularly served with process on the 27th day of February, 1934, in the City of Stowe, County of Lamoille, State of Vermont, and has failed, within the time allowed by law for answering, to answer to the complaint of the plaintiff on file herein, and that the default of the defendant has been duly and regularly entered as required by law, and

1 evidence having been thereupon introduced in said cases, and
 2 the Court having been fully advised in the premises, now makes
 3 its Findings of Fact and Conclusions of Law as follows:

4 FINDINGS OF FACT

5 The Court finds that all of the allegations of the plain-
 6 tiff's complaint are true.

7 CONCLUSIONS OF LAW

8 As Conclusions of Law from the foregoing facts, the Court
 9 finds:

10 1. That the plaintiff is entitled to the judgment and
 11 decree of this Court dissolving the bonds of matrimony hereto-
 12 fore and now existing between plaintiff and defendant and
 13 restoring each of them to the status of an unmarried person.

14 2. That both the plaintiff and the defendant are fit and
 15 proper persons to have the care, custody and control of the
 16 minor children, the issue of the marriage by and between the
 17 plaintiff and the defendant, whose names and dates of birth
 18 are set forth as follows: Charles F. Spalding, Jr., born
 19 September 11, 1946; Gerald C. Spalding, born September 10,
 20 1947; Richard C. Spalding, born December 16, 1950; Elizabeth W.
 21 Spalding and Josephine L. Spalding, born June 11, 1953; Florence
 22 C. Spalding, born November 22, 1950.

23 3. That if the defendant accepts the care, custody and
 24 control of all or any of such children, the plaintiff should
 25 pay for their maintenance and support as hereinafter set forth,
 26 provided that the defendant shall afford the plaintiff the
 27 following visitation rights:

28 A. The right to visit and have all or any of the
 29 children visit him during the Christmas vacation period on every
 30 alternate year.

1 B. The right to visit and have all or any of the
2 children visit him during the Easter vacation period on every
3 alternate year.

4 C. The right to visit the children for a five-week
5 period during each summer vacation period of each and every
6 year.

7 D. The right to visit the children at all reasonable
8 times at any place where said children may be living or staying.

9 E. The right to have the children visit with the
10 plaintiff at any place he may desire during at least one weekend
11 of each month, which visitation period shall commence on a
12 Friday after school hours and shall terminate on the following
13 Sunday before 10:00 P.M.

14 F. That the plaintiff shall pay any travel costs
15 which may be incurred in transporting the children from place
16 to place in order to effect the visitation rights provided for
17 hereinabove.

18 4. That the plaintiff should maintain and support each
19 of the said minor children the issue of the marriage by and
20 between the plaintiff and the defendant until each such child
21 reaches the age of majority, becomes self supporting, marries
22 or is otherwise emancipated, as follows:

23 A. That if any of said children attend preparatory
24 schools, colleges or other educational institutions, which are
25 chosen by or are acceptable and agreeable to the plaintiff, the
26 plaintiff shall pay the cost of attendance at such schools or
27 institutions.

28 B. That if the defendant accepts the care, custody
29 and control of any or all of such children and if any or all of
30 such children reside with the defendant, the plaintiff shall pay

1 to the defendant at the rate of One Hundred Fifty Dollars
 2 (\$150.00) per month per child for any such child residing with
 3 the defendant, which payment shall commence on April 1, 1934,
 4 and shall continue monthly thereafter.

5 5. That the plaintiff shall pay to the defendant by way
 6 of maintenance, support and alimony the sum of Five Hundred
 7 Dollars (\$500.00) a month, commencing on the first day of
 8 April, 1934, and continuing thereafter until the wife remarries,
 9 or until her death or until the death of the plaintiff, whichever
 10 event occurs first.

11 6. If the residence situate at Hill Road, Greenwich,
 12 Connecticut, continues to be owned and held in joint tenancy
 13 by the plaintiff and the defendant, the plaintiff shall allow
 14 the defendant, as additional alimony and maintenance, to reside
 15 in said residence or if this residence is rented at any time in
 16 the future the plaintiff's share of the rental received shall
 17 be paid to the defendant by way of additional alimony.

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19
 20 JUDGMENT AND DECREE OF DIVORCE

21 NOW, THEREFORE, by virtue of the law and the facts, it is
 22 hereby ORDERED, ADJUDGED AND DECREED as follows:

23 1. That plaintiff be, and he is hereby, given and granted
 24 a final and absolute divorce from the defendant; that the
 25 marriage heretofore and now existing between the parties is
 26 dissolved absolutely and forever and each of the parties hereby
 27 is restored to the status of an unmarried person.

28 2. That both the plaintiff and the defendant are fit and
 29 proper persons to have the care, custody and control of the
 30 minor children, the issue of the marriage by and between the

1 plaintiff and the defendant, whose names and dates of birth are
 2 set forth as follows: Charles F. Spalding, Jr., born
 3 September 11, 1940; Gerald C. Spalding, born September 19,
 4 1947; Richard C. Spalding, born December 10, 1950; Minniebeth W.
 5 Spalding and Josephine L. Spalding, born June 11, 1953; Florence
 6 C. Spalding, born November 22, 1959.

7 3. That if the defendant accepts the care, custody and
 8 control of all or any of such children, the plaintiff shall pay
 9 for their maintenance and support as hereinafter set forth,
 10 provided that the defendant shall afford the plaintiff the
 11 following visitation rights:

12 A. The right to visit and have all or any of the
 13 children visit him during the Christmas vacation period on
 14 every alternate year.

15 B. The right to visit and have all or any of the
 16 children visit him during the Easter vacation period on every
 17 alternate year.

18 C. The right to visit the children for a five-week
 19 period during each summer vacation period of each and every
 20 year.

21 D. The right to visit the children at all reasonable
 22 times at any place where said children may be living or staying.

23 E. The right to have the children visit with the
 24 plaintiff at any place he may desire during at least one weekend
 25 of each month, which visitation period shall commence on a
 26 Friday after school hours and shall terminate on the following
 27 Sunday before 10:00 P.M.

28 F. That the plaintiff shall pay any travel costs
 29 which may be incurred in transporting the children from place
 30 to place in order to effect the visitation rights provided for

hereinafter.

4. That the plaintiff shall maintain and support each of the said minor children the issue of the marriage by and between the plaintiff and the defendant until each such child reaches the age of majority, becomes self supporting, marries or is otherwise emancipated, as follows:

A. That if any of said children attend preparatory schools, colleges or other educational institutions, which are chosen by or are acceptable and agreeable to the plaintiff, the plaintiff shall pay the cost of attendance at such schools or institutions.

B. That if the defendant accepts the care, custody and control of any or all of such children and if any or all of such children reside with the defendant, the plaintiff shall pay to the defendant at the rate of One Hundred Fifty Dollars (\$150.00) per month per child for any such child residing with the defendant, which payment shall commence on April 1, 1964, and shall continue monthly thereafter.

5. That the plaintiff shall pay to the defendant by way of maintenance, support and alimony the sum of Five Hundred Dollars (\$500.00) a month, commencing on the first day of April, 1964, and continuing thereafter until the wife remarries, or until her death or until the death of the plaintiff, whichever event occurs first.

6. If the residence situate at Hill Road, Greenwich, Connecticut, continues to be owned and held in joint tenancy by the plaintiff and the defendant, the plaintiff shall allow the defendant, as additional alimony and maintenance, to reside in said residence, or if this residence is rented at any time in the future the plaintiff's share of the rental received

1 shall be paid to the defendant by way of additional alimony.

2
3 DONE IN OPEN COURT this 19th day of March, 1964.

4
5 RECORDED JUDGMENT DOCKET
6 BOOK A-24 PAGE 253

JOHN E. GABRIELLI

DISTRICT JUDGE

7 H. K. BROWN, CLERK
8 BY C. TEAT DEPUTY

9
10
11
12
13
STATE OF NEVADA, }
County of Washoe. } ss.

I, H. K. BROWN, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for Washoe County, said court being a court of record, having a common law jurisdiction, and a clerk and a seal, do hereby certify that the foregoing is a full, true and correct copy of the original, FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE OF DIVORCE IN CASE NO. 210599

CHARLES F. SPALDING, PLAINTIFF
VS.
ELIZABETH C. SPALDING, DEFENDANT

which now remains on file and of record in my office at Reno, in said County.

IN TESTIMONY WHEREOF, I have hereunto set my

hand and affixed the seal of said court, at Reno,

this 28th day of

January, A.D. 1969.

H. K. BROWN, Clerk.

By *O. M. Lange* Deputy.

CC-C-13

30

WIGGDRUP, FCHMILL,
WEDGE, BLAKEY,
FOLSON AND HUG
ATTORNEYS
208 NO. VIRGINIA ST.
RENO, NEVADA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTERJOINT EXHIBIT
4-D-----X
ELIZABETH C. SPALDING,

Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-against-

Index No. 1477/67

CHARLES F. SPALDING,

Defendant.
-----X

This action having duly come on to be heard before me at a Special Term, Part V, of this Court on the 28th day of September, 1967, and it appearing to the satisfaction of the Court that the defendant was duly served with the summons and complaint herein, and duly appeared and served his answer, and the issues raised by the pleadings having been duly heard and submitted to the Court on the 28th day of September, 1967, and the Court having taken proof of the facts set forth in the complaint and answer; and due deliberation having been had, I do decide and find as follows:

FINDINGS OF FACT

1. That the plaintiff and defendant were married in Haverford, Pennsylvania, on May 4, 1945.
2. That six children were born of the marriage, namely, Charles F. Spalding, Jr., born September 11, 1946, Gerald C. Spalding, born September 10, 1947, Richard C. Spalding born December 16, 1950, Elizabeth W. Spalding and Joseph L. Spalding, born June 11, 1953, and Florence C. Spalding, born November 22, 1959.
3. That the plaintiff, Elizabeth C. Spalding, on or before February 27, 1964, was and still is a domiciliary of the State of Connecticut.

4. That the defendant since November, 1962, through June 1965, was a domiciliary of the County of Westchester and State of New York.

5. That the defendant, Charles F. Spalding, was physically present in the State of New York from November 1962, until June 1965, and that he left the State of New York for the State of Nevada for the sole purpose of obtaining a divorce against the plaintiff.

6. That the defendant was not a bona fide resident of the County of Washoe, State of Nevada.

7. That while in the State of Nevada on February 27, 1964, the defendant, Charles F. Spalding, caused a proceeding for a divorce between the parties to be instituted in the Second Judicial District Court of Washoe County. That the plaintiff at the time of the commencement of this proceeding for divorce was a resident of the State of Connecticut and at no time was a resident of the State of Nevada.

8. That on or about March 19, 1964, a decree of divorce was made and entered in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, granting an absolute divorce against the plaintiff.

9. The plaintiff herein did not appear nor did she serve any answer and did not submit to the jurisdiction of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe in said action.

CONCLUSIONS OF LAW

1. The judgment of divorce obtained by the defendant, Charles F. Spalding, against the plaintiff in the State of Nevada on or about the 19th day of March, 1964, is null and void on the ground that the Second Judicial District Court of the State of Nevada, in and for the

County of Washoe, had no jurisdiction of either the defendant, Charles F. Spalding nor of the plaintiff, Elizabeth C. Spalding herein, the plaintiff having been domiciled in the State of Connecticut at the time, and the defendant, Charles F. Spalding, having been domiciled in the State of New York.

2. That the marriage between the defendant, Charles F. Spalding and the plaintiff, Elizabeth C. Spalding herein, was not legally dissolved by a Court of competent jurisdiction.

3. The plaintiff is entitled to judgment against the defendant, Charles F. Spalding, declaring said defendant to be the lawful husband of the plaintiff herein.

Dated: March 13 , 1968.

/s/ John H. Galloway, Jr.
John H. Galloway, Jr.
Justice of the Supreme Court.

AT a Special Term, Part V, of the
Supreme Court, held in and for
the County of Westchester at the
County Court House, 166 Main
Street, White Plains, New York,
on the 13th day of March
1968.

P R E S E N T :

HON. JOHN H. GALLOWAY, JR.,

Justice.

-----X
ELIZABETH C. SPALDING,

Plaintiff,

-against-

CHARLES F. SPALDING,

Defendant.
-----XJUDGMENT

Index No. 1477/67

The issues in the above entitled action having duly come on to be heard before Mr. Justice John H. Galloway, Jr., without a jury, at Special Term, Part V of this court, at the county courthouse in the City of White Plains, State of New York, on the 28th day of September, 1967, and the plaintiff having appeared therein by James Dempsey, her attorney, and the defendant by Ivan S. Skura, his attorney, and the issues having been duly tried and the court having heard the allegations and proofs of the parties, and the court, after due deliberation, having duly made and filed its decision, on the 13th day of March, 1968, stating the facts found and the conclusions of law thereon, and directing judgment as hereinafter provided,

Now, on motion of James Dempsey, attorney for plaintiff, it is
! ORDERED, ADJUDGED AND DECLARED, that the alleged divorce
procured by the defendant, Charles F. Spalding, from the plaintiff, in the
Second Judicial District Court in the County of Washoe in the State of
Nevada on the 19th day of March, 1964, was and is null and void, and of

no effect whatsoever, and it is further

ORDERED, ADJUDGED AND DECLARED, that the plaintiff,
Elizabeth C. Spalding, is and at all times since May 4, 1945, has been
the lawful wife of the defendant, Charles F. Spalding.

ENTER

/s/ John H. Galloway, Jr.
J.S.C.

Edward N. Vetrano
Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER-----X
ELIZABETH C. SPALDING,

Plaintiff,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

-against-

Index No. 1477/67

CHARLES F. SPALDING,

Defendant.
-----X

This action having duly come on to be heard before me at a Special Term, Part V, of this Court on the 28th day of September, 1967, and it appearing to the satisfaction of the Court that the defendant was duly served with the summons and complaint herein, and duly appeared and served his answer, and the issues raised by the pleadings having been duly heard and submitted to the Court on the 28th day of September, 1967, and the Court having taken proof of the facts set forth in the complaint and answer; and due deliberation having been had, I do decide and find as follows:

FINDINGS OF FACT

1. That the plaintiff and defendant were married in Haverford, Pennsylvania, on May 4, 1945.
2. That six children were born of the marriage, namely, Charles F. Spalding, Jr., born September 11, 1946, Gerald C. Spalding, born September 10, 1947, Richard C. Spalding born December 16, 1950, Elizabeth W. Spalding and Joseph L. Spalding, born June 11, 1953, and Florence C. Spalding, born November 22, 1959.
3. That the plaintiff, Elizabeth C. Spalding, on or before February 27, 1964, was and still is a domiciliary of the State of Connecticut.

4. That the defendant since November, 1962, through June 1965, was a domiciliary of the County of Westchester and State of New York.

5. That the defendant, Charles F. Spalding, was physically present in the State of New York from November 1962, until June 1965, and that he left the State of New York for the State of Nevada for the sole purpose of obtaining a divorce against the plaintiff.

6. That the defendant was not a bona fide resident of the County of Washoe, State of Nevada.

7. That while in the State of Nevada on February 27, 1964, the defendant, Charles F. Spalding, caused a proceeding for a divorce between the parties to be instituted in the Second Judicial District Court of Washoe County. That the plaintiff at the time of the commencement of this proceeding for divorce was a resident of the State of Connecticut and at no time was a resident of the State of Nevada.

8. That on or about March 19, 1964, a decree of divorce was made and entered in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, granting an absolute divorce against the plaintiff.

9. The plaintiff herein did not appear nor did she serve any answer and did not submit to the jurisdiction of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe in said action.

CONCLUSIONS OF LAW

1. The judgment of divorce obtained by the defendant, Charles F. Spalding, against the plaintiff in the State of Nevada on or about the 19th day of March, 1964, is null and void on the ground that the Second Judicial District Court of the State of Nevada, in and for the

County of Washoe, had no jurisdiction of either the defendant, Charles F. Spalding nor of the plaintiff, Elizabeth C. Spalding herein, the plaintiff having been domiciled in the State of Connecticut at the time, and the defendant, Charles F. Spalding, having been domiciled in the State of New York.

2. That the marriage between the defendant, Charles F. Spalding and the plaintiff, Elizabeth C. Spalding herein, was not legally dissolved by a Court of competent jurisdiction.

3. The plaintiff is entitled to judgment against the defendant, Charles F. Spalding, declaring said defendant to be the lawful husband of the plaintiff herein.

Dated: March 13 , 1968.

/s/ John H. Galloway, Jr.
John H. Galloway, Jr.
Justice of the Supreme Court.

T. C. Memo. 1975-250

UNITED STATES TAX COURT

ESTATE OF AMY ANN MCGINNIS SPALDING, Deceased, CHARLES F.
SPALDING, Executor, Petitioner v. COMMISSIONER OF
INTERNAL REVENUE, Respondent

Docket No. 1843-73. Filed July 30, 1975.

James B. Lewis, for the petitioner.

David N. Brodsky and Kimball K. Ross, for the
respondent.

JUL 30 1975

- 2 -

MEMORANDUM OPINION

TANNENWALD, Judge: Respondent determined a deficiency of \$467,197.62 in estate tax for the estate of Amy Ann McGinnis Spalding. As the parties have settled several issues, the only one remaining for decision is whether Charles F. Spalding (hereinafter referred to as Charles or petitioner) is the "surviving spouse" of decedent Amy Ann McGinnis Spalding (hereinafter Amy) within the meaning of section 2056(a).¹

All the facts are stipulated and found accordingly. We have set forth below those facts we deem necessary for an understanding of our decision herein.

Petitioner is the duly qualified and acting executor of Amy's estate, having been appointed by the Superior Court of the State of California for the County of San Mateo on January 9, 1970. At the time of filing the petition herein, petitioner resided in New York, New York.

1

Unless otherwise indicated, all section references shall be to the Internal Revenue Code of 1954, as in effect at the time of Amy's death.

Charles Spalding and Elizabeth C. Spalding (hereinafter Elizabeth) were married on May 4, 1945 in Haverford, Pennsylvania. They resided in Connecticut until November, 1962 when Charles moved to Westchester County, New York. Elizabeth has continued as a resident of Connecticut. Six children were born of their marriage.

On March 19, 1964 Charles secured a decree of divorce in the Second Judicial District Court of the State of Nevada in the County of Washoe. In this action, Charles appeared personally and by counsel while Elizabeth made no appearance. Noting that Elizabeth had been properly served but had failed to answer the complaint, judgment was entered for Charles. In its decree, the court stated:

NOW, THEREFORE, by virtue of the law and the facts, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. That plaintiff [Charles] be, and he is hereby, given and granted a final and absolute divorce from the defendant; that the marriage heretofore and now existing between the parties is dissolved absolutely and forever and each of the parties hereby is restored to the status of an unmarried person.

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Subsequently, Elizabeth brought an action for declaratory judgment in the Supreme Court of the State of New York, County of Westchester seeking to establish that she was still Charles' legal wife.

Both Elizabeth and Charles were present and represented by counsel when Elizabeth's action was heard by the court on September 28, 1967. On March 13, 1968, the court entered Findings of Fact, Conclusions of Law and Judgment, relevant parts of which are as follows:

FINDINGS OF FACT

* * * * *

4. That the defendant [Charles] since November, 1962, through June 1965, was a domicilliary [sic] of the County of Westchester and State of New York.

* * * * *

CONCLUSIONS OF LAW

1. The judgment of divorce obtained by the defendant, Charles F. Spalding, against the plaintiff in the State of Nevada on or about the 19th day of March, 1964, is null and void on the ground that the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, had no jurisdiction of either the defendant, Charles F. Spalding nor of the plaintiff, Elizabeth C. Spalding herein, the plaintiff having been domiciled in the State of Connecticut at the time, and the defendant, Charles F. Spalding, having been domiciled in the State of New York.

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2. That the marriage between the defendant, Charles F. Spalding and the plaintiff, Elizabeth C. Spalding herein, was not legally dissolved by a Court of competent jurisdiction.

JUDGMENT

Now, * * * it is

ORDERED, ADJUDGED AND DECLARED, that the alleged divorce procured by the defendant, Charles F. Spalding, from the plaintiff, in the Second Judicial District Court in the County of Washoe in the State of Nevada on the 19th day of March, 1964, was and is null and void, and of no effect whatsoever, and it is further

ORDERED, ADJUDGED AND DECLARED, that the plaintiff, Elizabeth C. Spalding, is and at all times since May 4, 1945, has been the lawful wife of the defendant, Charles F. Spalding.

No appeal was taken from either the Nevada or New York court decisions.

On May 11, 1968, Charles participated in a marriage ceremony with Amy in San Francisco, California. Amy died testate on December 18, 1969, at which time she and Charles resided in Hillsborough, California. Her Last Will and Testament was admitted to probate on January 8, 1970 by the Superior Court of the State of California for the County of San Mateo. In her will, Amy devised her interest in their residence and bequeathed several articles of property and a portion of her residuary estate to Charles pursuant to a so-called marital deduction formula provision.

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Amy's executor filed a timely Federal estate tax return claiming a marital deduction of \$1,130,803.55. Respondent has disallowed this entire deduction on the basis that Amy and Charles were not legally and validly married on the date of her death.

Section 2056(a)² provides for the allowance of a deduction from the gross estate of the value of property interests passing to decedent's "surviving spouse." Respondent makes no contention that the interests did not pass to Charles within the meaning of section 2056(a) nor is there any question involved herein as to the value of those interests. The sole issue before us is whether Charles was the "surviving spouse" of Amy as that term is used in section 2056(a).

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SEC. 2056. BEQUESTS, ETC., TO SURVIVING SPOUSE.

(a) Allowance of Marital Deduction.--For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsections (b), (c), and (d), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

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We have very recently given exhaustive attention to the applicability of section 2056(a) where the validity of the "marriage" between the decedent and his or her purported surviving spouse was in question. Estate of Wesley A. Steffke, 64 T.C. ____ (July 8, 1975) and Estate of Leo J. Goldwater, 64 T.C. ____ (July 8, 1975). In both these cases we held that, where a prior divorce had been held to be invalid by a court of the state where the decedent's estate was being administered, the "surviving spouse" requirement of section 2056(a) was not satisfied. In so holding we specifically rejected the applicability of the rationale of Wondsel v. Commissioner, 350 F.2d 339 (2d Cir. 1965), reversing in part T.C. Memo. 1964-213, Borax' Estate v. Commissioner, 349 F.2d 666 (2d Cir. 1965), reversing 40 T.C. 1001 (1963), and Feinberg v. Commissioner, 198 F. 2d 260 (3d Cir. 1952), reversing 16 T.C. 1485 (1951). Cf. Harold K. Lee, 64 T.C. ____ (July 8, 1975). There is no evidence herein of any action by a court of California (the state where the estate herein was being administered) but we do not consider that the absence of such action constitutes a material distinction. The fact is that a New York court, having jurisdiction of the parties and subject matter, had

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declared Charles' prior marriage invalid and that California would have been required to accord full faith and credit to the New York judgment under Article IV, Section 1, of the United States Constitution. Sutton v. Leib, 342 U.S. 402, 406-409 (1952).³ We deem this sufficient to fit this case within the mold of, and make controlling herein, our decisions in Steffke and Goldwater.⁴

Petitioner urges that, under the doctrine of Jack E. Golsen, 54 T.C. 742, 756-758 (1970), affd. on the substantive issue 445 F. 2d 985 (10th Cir. 1971), and since an appeal from our decision herein would be to the Second Circuit Court of Appeals, we are required to decide in his favor by virtue of Borax' Estate v. Commissioner, supra, and Wondsel v. Commissioner, supra. Neither of

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California courts recognize this constitutional obligation to the judicial processes of its sister states. See Hamilton v. Superior Court of County of San Mateo, 37 Cal. App. 3d 418, 422, 112 Cal. Rptr. 450, 452 (1st Dist., Ct. App. 1974); Biewend v. Biewend, 17 Cal. 2d 108, 109 P. 2d 701, 704 (1941). Compare also sec. 4401, Ann Cal. Civ. Code (West 1970).

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We expressly note that we are not dealing herein with a situation where the decedent's estate is administered or certain property is located in a state which may not give full faith and credit to the invalidation decree. See Colby v. Colby, 78 Nev. 150, 369 P. 2d 1019 (1962), cert. den. 371 U.S. 888 (1962). But see Sutton v. Leib, 342 U.S. 402, 408 (1952); Spolter, "Invalid Divorce Decrees," 24 Tax L. Rev. 163, 193 (1969); Note, "Invalidated Divorce Recognized for Federal Tax Purposes," 18 Stan. L. Rev. 750, nn. 10, 22 (1966).

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those cases involved the marital deduction and are not "squarely in point." See 54 T.C. at 757. Consequently, for the reasons stated in Estate of Leo J. Goldwater, supra, we consider the Colsen doctrine inapplicable. Cf. Harold K. Lee, supra.

To reflect the concessions of the parties and to dispose of other matters,

Decision will be entered
under Rule 155.

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

MEADE WHITAKER,
Chief Counsel,
Internal Revenue Service.

(Sgd) GERALD BACKER-BG

/s/ James B. Lewis
JAMES B. LEWIS
Counsel for Petitioner
345 Park Avenue
New York, New York 10022

By: _____

GERALD BACKER,
Assistant Regional Counsel,
26 Federal Plaza, (12th Floor),
New York, New York 10007,
Tel. No. 212-264-0262.

SEP 29 1975

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ESTATE OF AMY ANN MCGINNIS SPALDING, :
Deceased, CHARLES F. SPALDING, :
Executor, :

Petitioner-Appellant, : AFFIDAVIT OF SERVICE

v. : BY MAIL

COMMISSIONER OF INTERNAL REVENUE, :

Respondent-Appellee. :

- - - - -X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

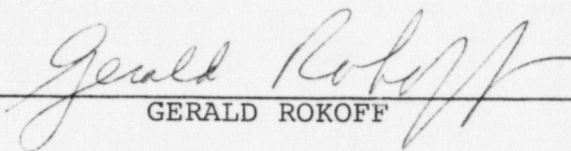
The undersigned being duly sworn, deposes and says:
Deponent is not a party to the action, is over 18 years of
age and resides at 66-25 103rd Street, Forest Hills, New
York 11375.

That on the 14th day of January, 1976, deponent
served the annexed briefs and appendix on Scott P. Crampton,
attorney for the Commissioner of Internal Revenue in this

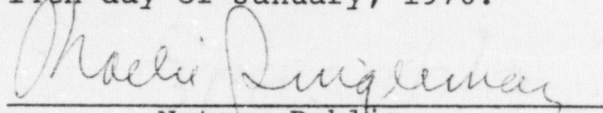
action at: Scott P. Crampton, Esq.
Assistant Attorney General
Tax Division
Department of Justice
10th Street & Constitution Avenue
Washington, D.C. 20530

the address designated by said attorney for that purpose
by depositing a true copy of same enclosed in a postpaid
properly addressed wrapper, in - a post office - official
depository under the exclusive care and custody of the

United States Post Office Department within the State of
New York.


GERALD ROKOFF

Sworn to before me this
14th day of January, 1976.


Notary Public

MOLLIE SINGERMAN
Notary Public, State of New York
No. 31-3687200
Qualified in New York County
Commission Expires March 30, 1977